



State of New Jersey

THE PINELANDS COMMISSION

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William F. Caton
Secretary, Federal Communications Commission
Washington, D.C. 20554

RE: MM Docket No. 97-182
Preemption of State and Local Zoning
and Land Use Restrictions on Siting,
Placement and Construction of
Broadcast Station Transmission Facilities

Dear Mr. Caton:

I am writing with regard to the proposal by the Federal Communications Commission to preempt state and local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities (MM Docket No. 97-182). We are concerned that the proposal fails to recognize areas where federal and state partnerships were created, pursuant to federal legislation, in recognition of such areas' national and international significance. In 1978, Congress determined that there was a national interest in preserving the natural and cultural resources of the Pinelands of New Jersey, and designated the region as The Pinelands National Reserve (P.L. 95-625). This step was taken "to protect, preserve and enhance the significant values of the land and water resources of the Pinelands area" and "to encourage and assist the State of New Jersey and its units of local government in the development of a comprehensive management plan for the Pinelands area in order to assure orderly public and private development in the area." The statute required that a Comprehensive Management Plan (CMP) be developed by the State of New Jersey, and that the plan and any subsequent amendments be approved by the Secretary of the Interior. In response to the federal statute, the State of New Jersey enacted "The Pinelands Protection Act in 1979 which made all local master plans and zoning ordinances subject to the regulatory policies of the CMP.

The Comprehensive Management Plan for the Pinelands National Reserve was approved by the Secretary of the Interior in 1981. It includes an assessment of "scenic, aesthetic, cultural, open space, and outdoor recreation resources of the area together with a determination of overall policies required to maintain and enhance these resources." As a result of the assessment performed by the Pinelands



Commission, the CMP contains a height limitation of 35 feet for any structures, including radio and television transmission and other communication facilities, which are not accessory to an otherwise permitted use, in areas of the region where future growth is severely restricted. Such facilities are currently permitted in locations of the region where less restrictive growth management policies apply under the plan. These regulatory policies were approved by the Secretary of the Interior, as part of his approval of the CMP required under Section 471i.(g) of Section 502 of The Omnibus National Parks and Recreation Act of 1978. As envisioned by the federal and state Pinelands legislation, this standard has been incorporated into the land use ordinances of 51 of the 53 municipalities and the 7 counties which comprise local government in the Pinelands National Reserve. The Pinelands Commission administers the CMP, and ensures that local ordinances are implemented in a manner consistent with the federally approved plan. The Commission is the federally designated planning entity for the Pinelands National Reserve.

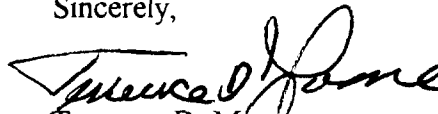
For regions such as the Pinelands National Reserve, we believe it would be inappropriate to preempt the state and local zoning and land use ordinances adopted in response to federal legislation. To do so would jeopardize the continued protection of these areas as Congress intended and would fail to recognize longstanding arrangements between the federal and state government concerning the regulatory authority of these lands. Below, for your consideration, is an amendment to the petitioners' rule proposal that we believe would better address these issues in the few regions of the United States that are subject to congressional findings that the resources of same merit national interest.

Section (b)(2): "Any state or local land-use, building, or similar law, rule or regulation that impairs the ability of federally authorized radio or television operators to place, construct or modify broadcast transmission facilities, is preempted unless the promulgating authority can demonstrate that such regulation is the result of federal legislation or is reasonable in relation to:

- (I) a clearly defined and expressly state health or safety objective other than one related to those set forth in Section (1)(I)-(iii) above; and
- (ii) the federal interest in (I) allowing federally authorized broadcast operators to construct broadcast transmission facilities in order to render their service to the public; and (ii) fair and effective competition among competing electronic media."

I thank you in advance for your consideration of our concerns. If you have any questions, please do not hesitate to contact me at the above number.

Sincerely,


Terrence D. Moore
Executive Director